

### **REMARKS**

Claims 1-12 and 45-60 are pending in the application. Claims 1 and 51 are hereby amended. In view of the below remarks, Applicants believe the claims are in condition for allowance and reconsideration is respectfully requested. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

#### ***Claim Rejections – 35 USC § 112***

The Examiner rejected claim 51 under 35 U.S.C. § 112 as being indefinite. The applicants have amended claim 51 to clarify the nature of the subject matter for which protection is sought. Support for the amendment is found in the description and no new subject matter is introduced.

#### ***Claim Rejections – 35 USC § 102(b)***

The Examiner rejected claims 1-12 under 35 U.S.C. § 102(b) as being anticipated by United State Patent No. 6,123,259 to Ogasawara. Claim 1 is amended herein to clarify the subject matter for which protection is being sought. Support for the amendment is provided in the specification and no new subject matter is added. As amended, independent claim 1 recites, "a data collection and transmission node means ... for ... transmitting ... the location where said data collection and transmission means is in use" (emphasis added). This limitation, recited by independent claim 1 and included in its dependent claims, is sufficient to distinguish the present invention over the invention of Ogasawara.

Particularly, Ogasawara does not teach a data collection device that transmits its location. To the contrary, Ogasawara teaches a data collection device (scanner) that retrieves product information. The scanner transmits the product information, *not its location*, to a centralized

controller. The centralized controller uses a database to determine the location of the product and then transmits the product location to the scanner. Alternatively, the scanner maintains a database of product locations. When the scanner retrieves product information it can look up the location of the product in its database. In neither case does the scanner transmit its own location. The approaches taught by Ogasawara are different from, and actually teach away from, a data collection device which transmits its location to a centralized controller.

For the above cited reasons, applicants feel that each limitation contained in independent claim 1 is not taught by Ogasawara. As such, the applicants request that the rejection of independent claim 1 under 35 U.S.C. § 102(b) be reconsidered and withdrawn. Similarly, each of dependent claims 2-12 contain the limitations of claim 1 by their dependency. As such, applicants also request that the examiner reconsider and withdraw the rejection of claims 2-12.

#### ***Claim Rejections – 35 USC § 102(e)***

The Examiner rejected claims 45-60 under 35 U.S.C. § 102(e) as being anticipated by Published US Patent Application US-2003/0213840 to Livingston et al (the '840 application). Applicants contend that the date of conception of the present invention and the date of its reduction to practice precede the filing date of the '840 application. In support of these contentions, applicants have attached a declaration made under 37 C.F.R. § 1.131.

Specifically, applicants submit that at least as early December 4<sup>th</sup>, 2001, the present invention had been conceived of by the applicants (see Declaration of Clay Von Mueller Under 37 CFR § 1.131, items 3-4). Further, applicants submit that the present invention was reduced to practice before the filing date of the '840 application. (see Declaration of Clay Von Mueller Under 37 CFR § 1.131, items 5-6).

#### ***Effective Date of References Under 35 USC § 102(e)***

The critical date of the '840 application as a reference under 35 USC § 102(e) is its effective filing date. The '840 application is a child of US patent application 10/150,680 to

Livingston et al. (the '680 application). In turn, the '680 application claims priority to provisional patent application 60/298,809. In order for a child application to gain the benefit of the filing date of its parent for the purposes of § 102(e), there must be support the child's claimed invention in the parent application. (see MPEP 2136.03(IV)).

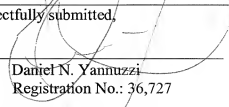
Here, the subject matter claimed in '840 application is not supported by the '680 application. For example, the '840 application claims a transmitter for transmitting customer location data to a centralized service counter. A plurality of the transmitters are deployed and each transmitter tells a centralized counter where a customer is. However, the '680 application teaches having receivers spread throughout a restaurant to receive customer identification information (see abstract). The central service lets the receivers know when the orders of customers are ready. Nothing in the '680 application supports having distributed transmitters for communicating customer location information to a centralized counter. Since the '680 application does not support the claims of the '840 application, the '840 application does not benefit from the filing date of the '680 application. As such, the critical reference date of '840 application under 35 USC § 102(e) is its own filing date, May 28, 2002.

As stated above, applicants have submitted a declaration under 37 CFR § 1.131 claiming conception at least as early as December 4, 2001 coupled with reduction to practice before May 28<sup>th</sup> 2002. (see Declaration of Clay Von Mueller Under 37 CFR § 1.131, items 3-6). As such, the '840 application is not a proper reference under 102 (e) against the present application. In light of these facts, Applicants respectfully request that the examiner reconsider and withdraw these rejections.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 18-1953 referencing Docket No. 13CT-126385. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: May 4, 2007	<p>Respectfully submitted,</p> <p>By:  Daniel N. Yannuzzi Registration No.: 36,727</p> <p>SHEPPARD MULLIN RICHTER &amp; HAMPTON LLP 12275 El Camino Real, Suite 200 San Diego, California 92130-2006 Telephone: 858-720-8900 Facsimile: 858-509-3691</p>
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